



## *Nevada State Board of Medical Examiners*

### **\* \* \* MINUTES \* \* \***

#### **OPEN SESSION BOARD MEETING**

**Held in the Chancellor I Conference Room at the Embassy Suites  
Hotel, Convention Center – Las Vegas**

**3600 Paradise Road, Las Vegas, Nevada 89109**

**and videoconferenced to**

**The Nevada State Board of Medical Examiners Conference Room**

**1105 Terminal Way, Suite 301, Reno, Nevada 89502**

***FRIDAY, DECEMBER 1, 2006 – 8:30 a.m.***

***and***

***SATURDAY, DECEMBER 2, 2006 – 8:45 a.m.***

#### ***Board Members Present***

Javaid Anwar, M.D., President

Sohail U. Anjum, M.D., Vice President

Donald H. Baepler, Ph.D., D.Sc., Secretary-Treasurer

Marlene J. Kirch

Charles N. Held, M.D.

Jean Stoess, M.A.

Cindy Lamerson, M.D.

S. Daniel McBride, M.D.

Benjamin J. Rodriguez, M.D.

#### ***Staff Present***

Drennan A. Clark, J.D., Executive Director/Special Counsel

Laurie L. Munson, Deputy Executive Director/

Information Systems Administrator/Chief of Administration

Bonnie S. Brand, J.D., General Counsel

Edward O. Cousineau, J.D., Deputy General Counsel

Lyn E. Beggs, J.D., Deputy General Counsel

Jerry C. Calvanese, M.D., Medical Reviewer

Douglas C. Cooper, Chief of Investigations

Pamela J. Castagnola, Deputy Chief of Investigations

Lynnette L. Daniels, Chief of Licensing

Carolyn H. Castleman, Deputy Chief of Licensing

#### ***Also Present***

Christine M. Guerici-Nyhus, J.D., Chief Deputy Attorney General

Peter A. Mansky, M.D., Director, Nevada Health Professionals Assistance Foundation

John Lanzillotta, P.A.-C, Physician Assistant Advisory Committee Member

John H. Steinmetz, Jr., R.R.T., Practitioner of Respiratory Care Committee Member

**FRIDAY, DECEMBER 1, 2006**

Agenda Item 1

**CALL TO ORDER AND ANNOUNCEMENTS**

- Roll Call/Quorum
- Javaid Anwar, M.D., President

The meeting was called to order by President Javaid Anwar, M.D., at 8:45 a.m.

Mr. Clark announced that all Board members were present and there was a quorum.

Agenda Item 2

**APPROVAL OF MINUTES**

- September 12, 2006 Emergency Telephone Conference Call Board Meeting – Open Session
- September 15 & 16, 2006 Board Meeting – Open/Closed Sessions

Mrs. Kirch moved to approve the Minutes of the September 12, 2006 Emergency Telephone Conference Call Board Meeting - Open Session, and the September 15 & 16, 2006 Board Meeting - Open/Closed Sessions. Ms. Stoess seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Agenda Item 3

**PERSONNEL**

**Open Session**

- Introduction of New Board Staff, Kristi L. Stewart and Monica C. Gustafson
  - Lynnette L. Daniels, Chief of Licensing; Douglas C. Cooper, Chief of Investigations

**Closed Session**

- Position-Specific Compensation Adjustment for Change in Duties
  - Drennan A. Clark, J.D., Executive Director/Special Counsel; Lynnette L. Daniels, Chief of Licensing

**- Introduction of New Board Staff**

Mr. Cooper introduced the Board's new Investigator, Monica C. Gustafson, to the Board.

Ms. Daniels introduced the Board's new License Specialist, Kristi L. Stewart, to the Board.

**- Position-Specific Compensation Adjustment for Change in Duties**

Mrs. Kirch moved to go into Closed Session. Dr. McBride seconded the motion, and it passed.

Upon returning to Open Session, Mrs. Kirch moved to approve the increase in salary, as recommended by staff, to \$32,000 annually. Dr. Held seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Agenda Item 4

**COMMITTEE REPORT ON BOARD'S PUBLIC SERVICE ANNOUNCEMENT PROGRAM  
AND REPORT BY ROBERT D. FISHER, PRESIDENT AND CEO, NEVADA  
BROADCASTERS ASSOCIATION**

- Jean Stoess, M.A., Chairperson; Marlene J. Kirch, Board Member; Drennan A. Clark, J.D., Executive Director/Special Counsel; Robert D. Fisher, President and CEO, Nevada Broadcasters Association

Mr. Clark told the Board that he had nothing to report, and said he did not see Mr. Fisher in the room.

Ms. Stoess said that she also had nothing to report. She asked that the matter be deferred to allow more time for Mr. Fisher to arrive at the meeting.

Agenda Item 11

**DISCUSSION CONCERNING REQUESTS FOR APPROVAL OF LIVE PATIENT  
DEMONSTRATIONS BY OUT-OF-STATE PHYSICIANS**

- Drennan A. Clark, J.D., Executive Director/Special Counsel; Lynnette L. Daniels, Chief of Licensing; Cindy Lamerson, M.D., Board Member

Mr. Clark stated that the Board discussed at the last meeting some type of supervision of, or licensure for, out-of-state physicians who come to Nevada to perform botox and other types of live patient demonstrations on a one-time basis. Staff has drafted a proposed regulation, with input from Dr. Lamerson, and that draft is included in the Board's meeting materials for this meeting. The regulation would give the Board some control over who was coming into the state and would grant a 15-day license to those physicians, limited to specific activities. He then requested the Board's input.

Discussion ensued concerning how best to regulate physicians who want to perform these types of procedures, and the requirements that should be imposed upon them.

Dr. Rodriguez stated no professional fees should be charged to the patients by the physicians performing the procedures.

Ms. Daniels stated that she thought the license should be opened up to all types of procedures.

Dr. Baepler stated that if the demonstrations are educational, they should be encouraged; however, a fee should be charged to the physicians who perform them.

Mr. Clark stated the application process could be streamlined for these types of applicants.

Dr. Lamerson stated the wording should be more general, as it currently related more to botox and those types of procedures.

Dr. McBride suggested that the physicians should be required to provide a history and physical and documentation of the indications for the procedure to the Board.

Dr. Held stated that the current draft requires that these physicians agree to be subject to all terms and conditions of the Medical Practice Act.

Dr. Baepler stated that if the statute would permit it, one exception should be made to compliance with the Medical Practice Act, in that fingerprinting should not be required because the process takes months and to require fingerprinting for a two or three day event would defeat the purpose of that type of license.

Mr. Clark said he would redraft the regulation to incorporate the Board members' suggestions and bring the revised draft back to the Board for review at the next meeting.

#### Agenda Item 12

#### **REQUEST FOR DIRECTION CONCERNING PEER REVIEWS GRANTED TO APPLICANT PHYSICIANS**

- Drennan A. Clark, J.D., Executive Director/Special Counsel; Lynnette L. Daniels, Chief of Licensing; Pamela J. Castagnola, Deputy Chief of Investigations

Ms. Daniels explained that staff does its best to accommodate physicians who have been granted a peer review in scheduling the peer reviews, but many of these physicians are not agreeable to any dates suggested and are pushing their peer reviews out three to six months, which makes scheduling difficult. She is asking for direction from the Board as to a timeframe in which these applicants would be required to submit to a peer review.

Dr. Baepler stated the use of a peer review as a substitute for the requirement of a major examination is something that the Board should discuss, perhaps through a committee.

Mrs. Kirch suggested that when granting a peer review to an applicant, the Board could put a constraint upon the amount of time in which the applicant could submit to the peer review.

Ms. Castagnola suggested that 90 days would be an acceptable timeframe.

Dr. Lamerson stated that this would take care of the problem in the interim, until such time as the Board can discuss the issue further.

Dr. Rodriguez suggested the Board could develop a standard template for its peer reviewers.

Dr. Held moved that the Board adopt a 90-day timeframe in which applicants can submit to a peer review. Ms. Stoess seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

#### Agenda Item 5

#### **CONSIDERATION OF REQUEST BY BRIAN K. IRIYE, M.D., CENTER FOR MATERNAL-FETAL MEDICINE, FOR INTERPRETATION OF THE BOARD'S REGULATION CONCERNING LIMITS IMPOSED FOR PASSAGE OF THE USMLE**

- Brian K. Iriye, M.D., Center for Maternal-Fetal Medicine

Dr. Iriye stated his practice group is a group of four high-risk O.B. specialists in Las Vegas. This specialty is an underserved specialty due mainly to the malpractice crunch, and

they have had difficulty finding highly-qualified physicians. They have one who they think is a spectacular candidate, but she does not meet the qualifications for licensure due to the USMLE requirement. She took part one in 1997, following chemotherapy treatment, and did not pass it. In 1998, she retook part one and passed, and then passed part two. Part three was delayed until her fellowship and she passed it 7 years and 3 months after she took the first exam. She passed all parts at the top 10 percentile in the country. Dr. Iriye's issue with the current system is that 31 other states have less restrictive requirements, in that they require all steps of the USMLE to be passed within 7 years of the passage of the first exam. She took her last examination in October of 2004, and the Board passed the new regulation in December of 2004, so she would not have known of those requirements. He has a very underserved specialty within the state and has an excellent candidate with outstanding credentials and is looking for a mechanism that would not exclude excellent doctors from coming to the state, especially in underserved specialties. The applicant is still available and really wants to work with them. He is looking for something like an endorsement pathway for people who did not know these new requirements while they were taking the tests, or a change in the wording of the Nevada regulation to match that of the other 31 states or the NBME guidelines.

Dr. Baepler stated the Board can make exceptions to their regulations.

Dr. McBride stated the Federation of State Medical Boards made a presentation to the Board at its last meeting regarding this particular issue, and it was made clear at that time that making this requirement more restrictive was felt to be more appropriate and was the direction other states were moving, and that the residents now coming out are aware of the requirement.

Dr. Anjum stated the Board should be allowed to make exceptions if warranted.

Dr. Baepler stated that in order to qualify for an exception, candidates could be required to show extraordinary circumstances.

Dr. McBride stated the Board could be in dangerous territory if it starts selecting out individuals because then it would not be applying a regulation evenly across the Board. Perhaps the regulation could be amended.

Ms. Daniels said the Board would have to look at whether the specialty is underserved.

Dr. Held suggested that the simplest thing to do would be that when a Nevada-licensed physician approaches the Board and identifies an applicant as an exceptional candidate in an underserved specialty, the Board could consider that applicant on a case-by-case basis.

Dr. Anwar suggested this is a matter that should be discussed further by the Board at a retreat or at some other time.

Dr. Lamerson stated that the Board did grant a license by endorsement to a physician in an underserved specialty earlier in the year.

Dr. Anjum suggested that Dr. Iriye's applicant should apply for a license by endorsement.

Dr. Baepler advised Dr. Iriye that his letter should be attached to her application.

Dr. Held moved that Dr. Iriye's applicant should be allowed to apply for licensure by endorsement even though she does not meet the USMLE requirement. Dr. Baepler seconded the motion.

Mrs. Kirch stated the Board did not need to make a motion as anyone has the option to apply by endorsement. No vote was taken on the motion.

Agenda Item 4 **(CONTINUED)**

**COMMITTEE REPORT ON BOARD'S PUBLIC SERVICE ANNOUNCEMENT PROGRAM  
AND REPORT BY ROBERT D. FISHER, PRESIDENT AND CEO, NEVADA  
BROADCASTERS ASSOCIATION**

- Jean Stoess, M.A., Chairperson; Marlene J. Kirch, Board Member; Drennan A. Clark, J.D., Executive Director/Special Counsel; Robert D. Fisher, President and CEO, Nevada Broadcasters Association

Ms. Stoess stated the Board could dispense with Agenda Item 4, as she still had not seen Mr. Fisher in the room.

Agenda Item 6

**CONSIDERATION OF ADOPTION OF AMENDMENTS TO NEVADA ADMINISTRATIVE  
CODE CHAPTER 630**

- Review of Public Comments on, and Consideration of Adoption of, Proposed Amendment to Nevada Administrative Code Chapter 630, Authorizing Physician Assistants to Act Under the Supervision of Any Physician at the Scene of an Accident or a Natural or Manmade Disaster When Rendering Emergency Care
  - Review of Public Comments on, and Consideration of Adoption of, Proposed Amendment to Nevada Administrative Code Chapter 630, to Provide a Procedure for Licensure of Eminent Physicians
  - Consideration of Amendment to Nevada Administrative Code Chapter 630, to Change Title of NAC 630.515 from "Temporary License" to "Intern License"
  - Edward O. Cousineau, J.D., Deputy General Counsel
- Review of Public Comments on, and Consideration of Adoption of, Proposed Amendment to Nevada Administrative Code Chapter 630, Authorizing Physician Assistants to Act Under the Supervision of Any Physician at the Scene of an Accident or a Natural or Manmade Disaster When Rendering Emergency Care**

Mr. Cousineau advised that two workshops and a hearing had been held earlier in the month, and the only comment received was from Lawrence P. Matheis, Executive Director of the Nevada State Medical Association.

Mr. Matheis said they agree with the basic thrust of the proposed regulation, but there is a question of "wordsmithing." He also wants to ensure that everyone understands it is not a liability protection directly, which would probably require a tweaking of the Good Samaritan Act.; however, he suggested asking the Legislative Counsel Bureau for clarification as to whether physician assistants and other licensed health professionals are already covered generally under the changes to the Good Samaritan Law over the last several years. He thinks this regulation creates, if anything, a legal safe haven that defines the circumstances under which

the Board views that a physician assistant is acting appropriately in an emergency situation. That would be an extra protection, not as strong as explicitly being covered by the Good Samaritan Act, but would be a useful clarification. The first sentence states that a physician assistant may be able to do a number of things without direct supervision of the supervising physician. The physician is always accountable for the physician assistant because the physician assistant is acting as the agent of that physician. And in trying to define the circumstances when the direct supervision link is severed because of a disaster or an emergency situation, there are two things the Board may want to add. First, to the last sentence, add "as soon as practicable," or something along those lines, to ensure there is clear direction as to when the physician assistant needs to be back with the supervising physician. Second, the supervising physician should be directed to ensure that if there is any specific act that that physician doesn't want that physician assistant to do under any circumstances, it should be explicitly included in the contract and protocol between the physician and the physician assistant.

Discussion ensued concerning whether acts that the physician assistant may take in an emergency or disaster situation should be delineated.

Dr. McBride suggested that legislation could be drafted so that in the event of a huge disaster, the Governor, or other official, could appoint either the chief medical officer in a county or the state-designated officer, to assume supervising responsibility and legal responsibility for all physician assistants who may respond, which would provide a single, more central, responsible party to the state.

Weldon Havins, M.D., J.D., CEO and Special Counsel of the Clark County Medical Society, stated that the D.O. Board has requested legislation through the L.C.B. for this session to equilibrate the treatment of physician assistants under the D.O. Board the same as under the Medical Board. Emergency situations are not mentioned in that bill draft. Emergencies are addressed in NRS 41.505(1), the Good Samaritan Act, but to his recollection, physician assistants have not been included under that. That is something that might be addressed by the Legislature so that it would cover physician assistants under both boards.

Discussion ensued concerning the differences in licensing requirements for physician assistants who work under M.D.s and those who work under D.O.s.

Dr. Havins stated that physician assistants who work under D.O.s are not required to be licensed by the D.O. Board. They take a certification exam and then appear before the D.O. Board with a supervising D.O.

Dr. Lamerson stated if physician assistants working under D.O.s are diagnosing and treating illnesses, they are practicing without a license.

Dr. Rodriguez suggested an addition to the regulation to include that a physician assistant is limited to taking those actions for which he or she has been trained.

Dr. McBride moved that the proposed regulation be sent back for revision and reconsideration. Dr. Baepler seconded the motion, and it passed, with Dr. Anjum, Dr. Baepler, Dr. McBride, Dr. Rodriguez and the Chair voting in favor of the motion, and Mrs. Kirch, Dr. Held, Ms. Stoess and Dr. Lamerson voting against the motion.

**- Review of Public Comments on, and Consideration of Adoption of, Proposed Amendment to Nevada Administrative Code Chapter 630, to Provide a Procedure for Licensure of Eminent Physicians**

Mr. Cousineau advised that two workshops and a hearing had been held, and the only comment received was from Lawrence P. Matheis, Executive Director of the Nevada State Medical Association.

Mr. Matheis stated that he has no problem with what the Board is fundamentally attempting to do here, but since the Board is creating a new approach to the question of what to do with an applicant who doesn't meet the current licensing requirements, the Board needs to be as explicit as possible with respect to what the Board is specifically seeking. In paragraph (a), and wherever it is repeated throughout, he thinks the Board is referring to physicians who have not been, or are not, licensed in the United States or Canada, and therefore their licensing would not easily be handled under Nevada law, and the Board needs to explicitly state that somewhere. He stated there is the same problem in paragraph (b), in attempting to define a center of international renown. He suggested the Board list the specific institutions to which the Board is referring.

Ms. Stoess suggested the word "a" be added between the words "is" and "foreign" in the first line of the proposed language.

Discussion ensued concerning the difficulty in designating specific institutes within the regulation. Dr. McBride stated he would have no problem with listing several examples of currently Board-recognized facilities, but not limit the regulation to only those specific facilities.

Dr. Held moved to adopt the regulation with the addition of the word "a" between the words "is" and "foreign" in the first line of the proposed language. Mrs. Kirch seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

**- Consideration of Amendment to Nevada Administrative Code Chapter 630, to Change Title of NAC 630.515 from "Temporary License" to "Intern License"**

Mr. Cousineau requested authority to proceed with drafting a regulation changing the title of NAC 630.515 to make it consistent with NRS 630.277.

Mrs. Kirch moved that the Board authorize staff to proceed. Dr. Rodriguez seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.



Agenda Item 8

**CONSIDERATION OF REQUEST BY GLEN D. LYBBERT, M.D. FOR MODIFICATION OF CONDITIONS PLACED UPON HIM IN ORDER TO OBTAIN LICENSE TO PRACTICE MEDICINE**

- Glen D. Lybbert, M.D.

Dr. Lybbert told the Board that without an unlimited license, he could not obtain hospital privileges in order to proceed with the six-months training required of him by the Board or obtain malpractice insurance. There can be provisions or restrictions placed upon the license, but it has to be an unlimited license.

Dr. Baepler explained that the Board had revoked Dr. Lybbert's license some time ago due to arrearages in child support payments, which Dr. Lybbert subsequently cleared up from a legal perspective. Dr. Lybbert is an OB/Gyn with an excellent medical record, but it has been some time since he practiced, so as a condition to restoration of his license, the Board required him to complete a six-month mini-residency program. It was thought he could complete this requirement through the University of Nevada Medical School, but he has been unable to work something out with them, so the Board suggested Dr. Lybbert find a group practice of OB/Gyns with which he could complete the internship. He has found one; however, he is unable to perform the six-month mini residency with the group unless he has hospital privileges and he can't get hospital privileges unless he has an unlimited medical license.

Dr. Baepler asked Dr. Lybbert if it would be acceptable if the Board issued him a license restricted to practice with the particular group he has proposed for the six-month period of time.

Dr. Lybbert stated that it would be acceptable.

Dr. McBride asked whether Dr. Lybbert had passed SPEX, and Dr. Lybbert stated that he had.

Dr. McBride stated that accordingly, Dr. Lybbert met the examination requirements for licensure.

Dr. Anjum said that once Dr. Lybbert completed the program, the Board could review his application and consider whether to lift the restriction.

Ms. Daniels stated that the restriction to practice with the particular group could be placed on the back of Dr. Lybbert's license wallet ID card.

Dr. Anwar stated the internship issue, in general, should be discussed at a Board retreat.

Discussion ensued concerning the standard required by OB/Gyn residency in order to be considered competent in the field.

Dr. Anjum said the Board should add as a condition that the supervising physicians submit a report to the Board at the end of the six-month mini-residency program outlining Dr. Lybbert's performance.

Dr. Baepler moved that the Board grant a license to Dr. Lybbert with the following conditions: That he be issued a license restricted to practice under supervision of the group of physicians he has proposed, that the group accept all liability for Dr. Lybbert's actions while he is working with them in this mini-residency program, that at the end of the six-month program, the group submit a written report to the Board concerning Dr. Lybbert's performance. Upon successful completion of the mini-residency program, Dr. Lybbert can appear before the Board and petition to have the conditions removed from his license. Dr. Rodriguez seconded the motion, and it passed, with Mrs. Kirch voting against the motion and the Chair voting in favor of the motion.

Agenda Item 9

**DISCUSSION CONCERNING THE USE OF HUMAN GROWTH HORMONE IN THE PRACTICE OF MEDICINE IN THE STATE OF NEVADA**

- Frank Shallenberger, M.D., H.M.D.

Dr. Shallenberger stated he has a general medical practice and in the context of that he uses human growth hormone for several types of medical conditions, including cases where there is marked frailty in people who are aging. He also sees a lot of people who consult with him concerning slowing down the aging process. In those cases, he looks at four things: exercise, nutrition, detoxification and hormone replacement, and he could make a good case that proper replacement of hormones, as they become deficient, can slow down the aging process. He saw the article in the Board's newsletter concerning human growth hormone, and is seeking clarification to clarify the Board's position on the use of growth hormones. He uses it in clinical conditions, where there is no demonstrable growth hormone deficiency, and uses it as people get older because sooner or later, as people get older, they are going to become deficient in growth hormone. He assumes the Board's intent is to restrict the use of any anabolic hormones for sports performance or other performance-types of activities, and is hoping that the Board doesn't mean that when a patient becomes deficient in a hormone, the hormone can't be replaced. He is also seeking clarification that if the Board doesn't have a problem with replacement of hormones as they become deficient, how one can determine and demonstrate to the satisfaction of the Board that a particular patient has a hormonal deficiency. He needs to know whether he is allowed to administer growth hormone to adults who are deficient in growth hormone, and if so, whether the Board specifies any specific criteria in determining whether a deficiency is present, and also whether he allowed to use it in clinical conditions that don't necessarily have a growth hormone deficiency.

Dr. Held asked whether the FDA's recommendation concerning use of growth hormones had changed recently.

Dr. Shallenberger stated that the FDA allowed the use of growth hormone where there was a demonstrated deficiency.

Dr. Lamerson stated the FDA has defined it very specifically and they consider it illegal to use it outside of a deficiency state. The deficiency state has to be well-defined, and if it is not well-defined by standard of care and how you evaluate patients for a deficiency, such as the patients' levels, then it is considered illegal. The FDA defines it as a laboratory value of a deficiency.

Dr. Shallenberger asked whether the Board had an opinion as to what laboratory tests and studies doctors could use.

Dr. Anjum stated that the Board cannot specify when and when not to use a particular medicine, that physicians have to rely on FDA guidelines, textbooks, literature, etc.

Milton Wong, M.D., a practicing endocrinologist in Las Vegas and a current member of the Board of Directors of the American Association of Clinical Endocrinologists, AACE, a clinical endocrinology group that represents the majority of practicing endocrinologists in the United States, stated he thought the article in the Board's newsletter concerning use of growth hormone was straightforward and to the point on the issue. He believes there has been inappropriate use of growth hormone and has seen examples of it in his practice. He described the proper tests that should be used to test for hormone deficiencies, pursuant to the current AACE guidelines. There is really no evidence growth hormone is an anti-aging product, per se. You can see enhanced bone density, enhanced muscle mass, some see greater strength, but there are also downsides to it, such as delayed wound healing.

Dr. Anwar stated the position of the Board is not to give specific guidelines regarding treatment of disease, conditions, disorders or deficiencies, but it does look at what is generally accepted by their peers as the appropriate practice of medicine. The Board is not going to get involved in what tests are better than others, but it does look at what falls within what is considered to be the good practice of medicine and what falls outside of it.

#### Agenda Item 10

#### **CONSIDERATION OF LICENSE APPLICATION FEES AND 2007-2009 BIENNIAL RENEWAL FEES FOR PHYSICIANS AND PHYSICIAN ASSISTANTS**

- Donald A. Baepler, Ph.D., D.Sc., Secretary-Treasurer; Drennan A. Clark, J.D., Executive Director/  
Special Counsel; Lynnette L. Daniels, Chief of Licensing

Dr. Baepler said he was combining this item with the Secretary-Treasurer's Report that was to come later in the meeting. He then explained that at one time, the Board had a budget surplus that was considered excessive, and upon the advice of the Board's auditors, it was the Board's goal to reduce that surplus very significantly. So four years ago, the Board reduced its registration fees for physicians from \$600 to \$400. Subsequently, over a relatively short period of time the Board was tasked with licensure of respiratory therapists, and the Legislature abolished the Medical-Dental Screening Panel, which had previously taken a great number of cases out of the hands of the Board, and simultaneously referred certain court cases involving doctors to the Board, thereby almost doubling the investigative caseload. This resulted in the addition of a second investigative committee and all the attendant expenses associated with that, as well as an increase in investigative and legal staff to handle the increased caseload, and an increase in licensing staff to handle the increase in the number of licensees. All of this resulted in the necessity of additional office space, and remodeling. As a result of the foregoing, the surplus shrank.

At a meeting in November, the auditors presented projections for the next biennial budget, which showed at the end of the first year, the Board would be \$800,000 in the red, not enough to cover the Board's operations. The second year was the same. The Board had been

forced to use its surplus for many additional costs that were undiscoverable until the auditors made their projections. In reviewing the projections further, they found a number of miscalculations, which resulted in finding an additional \$300,000 to \$400,000, and a number of cuts have been made to the budget to reduce expenses. However, it will be necessary for the Board to set a new fee schedule within the limits of the statute. The fee schedule needs to be approved at this meeting in order to print and send out license renewal forms. A proposed biennial budget, which will include options and variables, will be presented at the March meeting, and can be solidified at the June meeting, because it does not take effect until July 1. Dr. Baepler will be recommending discontinuation of the contract with Nevada Broadcasters Association, which will save a very significant amount of money and the Board will also be forced to reduce the amount of support it gives to the Diversion Program. If the proposed fee schedule is adopted and the projections for new applications and renewals hold up, the Board should be in fine shape for the second year of the biennium, with a comfortable surplus, but not the million dollar surplus the Board should have. The goal will be to return to a million dollar surplus within four years. The Board is not currently in financial trouble, but is operating under an austerity budget. Fees need to be increased because there is nothing else that can be removed from the budget; equipment, supplies, and other items have already been reduced and if any staff positions are vacated, he will recommend that they remain vacant for the time being, even though that would leave the staff shorthanded. The new fee will cost a doctor a dollar a day for his license. The proposed increase is from \$600 to \$800 for the biennium. The Board needs to increase its revenue without increases its expenses, and the hope is that in two years, when fees are again discussed, the fees can again be reduced.

Dr. Baepler stated there was one additional fee that was not included on the proposed fee schedule. It has been the experience of other states that when they have gone online with license renewals, the response was not very good. New Mexico dealt with this by instituting a \$100 fee for processing paper renewals. Dr. Baepler and staff are proposing a \$50 processing fee. The Board has spent tens of thousands of dollars in implementing an online renewals system, and it costs a lot of money to handle the massive amount of paper involved in paper renewals, so we want to encourage our licensees to renew online.

Discussion ensued concerning the amount of the proposed processing fee.

Mrs. Kirch moved that the Board approve the fee schedule, including a \$50 fee for processing paper renewals. Dr. Lamerson seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Agenda Item 13

**DISCUSSION CONCERNING LIMITING PUBLIC COMMENT TO FIVE MINUTES PER SPEAKER**

- Drennan A. Clark, J.D., Executive Director/Special Counsel

Mr. Clark stated that at the last Board meeting, during the time for public comment, a gentleman addressed the Board for an extended period of time. In doing some research, staff has found that other state and county agencies and boards limit the time an individual may make public comment to three, four or five minutes. It is staff's recommendation that the Board adopt a policy that each individual will be limited to five minutes for his or her public comment.

Discussion ensued.

Ms. Guerci-Nyhus advised that if the Board were to institute a policy limiting the time for public comment, that time limit would have to be applied equally to all, and if the Board wanted to hear more from any particular individual, it would have to put the issue in writing for placement on a future meeting agenda.

Dr. McBride moved that the Board adopt a five-minute time limit per individual for public comment. Mrs. Kirch seconded the motion.

Ms. Stoess stated she did not think it was necessary at this time for the Board to institute such a policy.

A vote was taken on the motion, and it passed, with Dr. Anjum, Dr. Baepler, Mrs. Kirch, Dr. Lamerson, Dr. McBride, Dr. Rodriguez and the Chair voting in favor of the motion, and Dr. Held and Ms. Stoess voting against the motion.

#### Agenda Item 15

##### **REPORT ON STATUS OF ONLINE LICENSING RENEWALS PROGRAM**

- Laurie L. Munson, Deputy Executive Director/Information Systems Administrator;  
Lynnette L. Daniels, Chief of Licensing

Ms. Daniels stated staff is currently in the process of testing the online renewals system. The Systems Automation Project Manager is leaving, which may cause further delays. She believes it will be a simple online renewal system and the Board will be really happy with it. She explained that review of online renewal applications will go through a similar process as that for paper renewals.

#### Agenda Item 19

##### **ADJUDICATION IN THE MATTER OF THE NEVADA STATE BOARD OF MEDICAL EXAMINERS vs. KENT SKOGERSON, M.D., BME CASE NO. 04-8167-01**

- Christine Guerci-Nyhus, J.D., Chief Deputy Attorney General

#### **OPEN SESSION**

Ms. Guerci-Nyhus named the investigative committee members who had authorized the filing of the complaint.

Mrs. Kirch moved to go into Closed Session. Dr. Held seconded the motion, and it passed.

Upon returning to Open Session, Dr. Rodriguez moved that the Board find Kent Skogerson, M.D. not guilty of Count I: failure to properly perform a crural myotomy. Dr. Lamerson seconded the motion, and it passed unanimously, with all adjudicating Board members voting in favor of the motion.

Dr. Rodriguez moved that the Board find Dr. Skogerson guilty of Count II: failure to properly diagnose the patient as having gastro esophageal reflux disease prior to surgery. Dr. McBride seconded the motion, and it passed unanimously, with all adjudicating Board members voting in favor of the motion.

Ms. Guerri-Nyhus summarized the sanctions available to the Board based upon its finding of one violation.

Mr. Cooper stated the costs were \$16,913.67.

Dr. McBride moved that Dr. Skogerson receive a public reprimand and be ordered to reimburse one-half of the Board's costs of investigation and prosecution of the case against him, based on the fact that he was found not guilty of Count I, payable within 90 days of the Board's order. Dr. Rodriguez seconded the motion.

Discussion ensued concerning whether Dr. Skogerson should reimburse all or half of the costs.

A vote was taken on the motion, and it failed, with Dr. McBride and Dr. Lamerson voting in favor of the motion and Mrs. Kirch, Dr. Held, Ms. Stoess and Dr. Rodriguez voting against the motion.

Dr. Held moved that Dr. Skogerson receive a public reprimand and be ordered to reimburse all of the Board's costs of investigation and prosecution of the case against him, payable within 90 days of the Board's order. Mrs. Kirch seconded the motion.

Discussion ensued concerning the costs incurred in the case. Dr. McBride stated that one of the reasons he had suggested the costs be reduced was because the Board had to retain a second expert after the initial expert was called to active duty, which caused the case to be somewhat protracted. Mr. Cooper stated the majority of the costs were for the hearing.

A vote was taken on the motion and it passed unanimously, with all adjudicating Board members voting in favor of the motion.

Ms. Guerri-Nyhus stated there were some procedural issues that needed to be addressed in the case. Dr. Skogerson's attorney had made a motion for costs due to the second continuance, which was an issue the hearing officer left to the discretion of the Board. The hearing officer had instructed Dr. Skogerson's attorney to submit an itemized, sworn statement of those costs within 20 days, and that itemized list was not provided. In light of that, Ms. Guerri-Nyhus' recommendation was that the Board deny the motion for costs on the second continuance.

Dr. Held moved that the Board deny Dr. Skogerson's attorney's motion for costs related to the second continuance. Mrs. Kirch seconded the motion, and it passed unanimously, with all adjudicating Board members voting in favor of the motion.

Agenda Item 20

**ADJUDICATION/RECOMMENDATION FOR DISMISSAL IN THE MATTER OF THE NEVADA STATE BOARD OF MEDICAL EXAMINERS vs. QUINCY FORTIER, M.D., BME CASE NO. 06-2437-1**

- Christine Guerici-Nyhus, J.D., Chief Deputy Attorney General

**OPEN SESSION**

Ms. Guerici-Nyhus named the investigative committee members who had authorized the filing of the complaint against Dr. Fortier.

Dr. Anwar stated that legal counsel had made a recommendation that the Board dismiss the case, as Dr. Fortier had passed away.

Dr. Rodriguez moved that the Board dismiss the case against Dr. Fortier with prejudice. Ms. Stoess seconded the motion.

Dr. Lamerson requested that it be put on the record that although the physician has passed away, which makes it impossible to adjudicate the case, the act of the physician using his own sperm for artificial insemination while he was competent was a deplorable act.

A vote was taken on the motion, and it passed unanimously, with all adjudicating Board members voting in favor of the motion.

Agenda Item 21

**ADJUDICATION IN THE MATTER OF THE NEVADA STATE BOARD OF MEDICAL EXAMINERS vs. SHAUKAT DAMJI, M.D., BME CASE NO. 04-7404-1**

- Christine Guerici-Nyhus, J.D., Chief Deputy Attorney General

**OPEN SESSION**

Ms. Guerici-Nyhus named the investigative committee members who had authorized the filing of the complaint against Dr. Damji.

Mrs. Kirch moved to go into Closed Session. Dr. Baepler seconded the motion, and it passed.

Upon returning to Open Session, Dr. McBride moved that the Board find Shaukat Damji, M.D. not guilty of both counts of the complaint against him, as his treatment of the patient did not rise to the level of malpractice. Dr. Rodriguez seconded the motion, and it passed, with Mrs. Kirch voting against the motion and Dr. Anwar, Ms. Stoess, Dr. Lamerson, Dr. McBride and Dr. Rodriguez voting in favor of the motion.

Agenda Item 22

**RECOMMENDATION FOR DISMISSAL WITHOUT PREJUDICE IN THE MATTER OF THE  
NEVADA STATE BOARD OF MEDICAL EXAMINERS vs. BRIAN BARNES, M.D., BME  
CASE NO. 05-27636-1**

- Lyn E. Beggs, Deputy General Counsel

**OPEN SESSION**

Ms. Guerci-Nyhus named the investigative committee members who had authorized the filing of the complaint against Dr. Barnes.

Dr. Lamerson moved to go into Closed Session. Mrs. Kirch seconded the motion, and it passed.

Upon returning to Open Session, Ms. Stoess moved that the Board dismiss the case against Dr. Barnes without prejudice. Dr. Held seconded the motion, and it passed unanimously, with all adjudicating members voting in favor of the motion.

Agenda Item 23

**RECOMMENDATION FOR DISMISSAL WITH PREJUDICE IN THE MATTER OF THE  
NEVADA STATE BOARD OF MEDICAL EXAMINERS vs. JAMES M. HOGAN, M.D., BME  
CASE NOS. 06-9442-1 AND 06-9442-2**

- Lyn E. Beggs, Deputy General Counsel

**OPEN SESSION**

Dr. Rodriguez moved that the Board dismiss the cases against Dr. Hogan with prejudice. Mrs. Kirch seconded the motion, and it passed unanimously, with all adjudicating members voting in favor of the motion.

Mr. Clark stated that the reason the cases were dismissed was because Dr. Hogan had passed away.

Discussion ensued concerning whether there were circumstances under which it would be possible for the Board to continue to adjudicate against a licensee who had passed away in order to attempt to recover the costs incurred in the investigation and prosecution of the case from the licensee's estate.

**RECESS**

Dr. Anwar recessed the meeting for lunch at 12:45 p.m.

**RECONVENE**

Dr. Anwar reconvened the meeting at 1:15 p.m.



## Agenda Item 16

### **REPORTS**

- Diversion Program - Quarterly Report - Peter Mansky, M.D., Director, Nevada Health Professionals Assistance Foundation
- Physician Assistant Advisory Committee - John B. Lanzillotta, P.A.-C, Advisory Committee Member
- Practitioner of Respiratory Care Advisory Committee - Steven E. Kessinger, C.R.T., Advisory Committee Member
- Investigative Committees - Donald H. Baepler, Ph.D., D.Sc., Secretary-Treasurer, Chairperson, Investigative Committee A  
Sohail U. Anjum, M.D., Chairperson, Investigative Committee B
  - Consideration of Cases Recommended for Closure by the Committees
- Investigations Division - Douglas C. Cooper, Chief of Investigations
  - Status of Investigative Caseload
  - Compliance Program Update
- Nevada State Medical Association Liaison Report - Cindy Lamerson, M.D., Board Member; Lawrence P. Matheis, Executive Director, Nevada State Medical Association
- Clark County Medical Society Liaison Report - Benjamin J. Rodriguez, M.D., Board Member; Weldon Havins, M.D., J.D., CEO and Special Counsel, Clark County Medical Society
- Washoe County Medical Society Liaison Report - Cindy Lamerson, M.D., Board Member; Jeanie L. Catterson, Executive Director, Washoe County Medical Society
- Secretary-Treasurer - Donald H. Baepler, Ph.D., D.Sc., Secretary-Treasurer
  - Status of Finances
- International Association of Medical Regulatory Authorities (IAMRA) 7<sup>th</sup> International Conference on Medical Regulation, November 11-14, 2006, Wellington, New Zealand
  - S. Daniel McBride, M.D., Board Member; Benjamin J. Rodriguez, M.D., Board Member

#### **- Practitioner of Respiratory Care Advisory Committee**

Ms. Munson advised the Board that members of the Practitioner of Respiratory Care Advisory Committee had been in attendance earlier in the meeting, but had left, as they did not have anything to report to the Board at this time.

**Investigative Committees – Donald H. Baepler, Ph.D., D.Sc., Secretary-Treasurer, Chairperson, Investigative Committee A  
Sohail U. Anjum, M.D., Vice President, Chairperson, Investigative Committee B**

#### **- Consideration of Cases Recommended for Closure by the Committees**

Dr. Baepler reported that Investigative Committee A had considered 89 cases, requested an appearance in 4 cases, issued 6 letters of concern, referred 5 cases back to investigative staff for further investigation or follow-up and recommended closure of 74 cases.

Dr. Anjum reported that Investigative Committee B had considered 85 cases, authorized the filing of a formal complaint in 3 cases, sent 1 case out for peer review, requested an appearance in 4 cases, issued 10 letters of concern, referred 3 cases back to investigative staff for further investigation or follow-up and recommended closure of 64 cases.

Dr. Held moved to approve for closure the cases recommended by the Investigative Committees. Dr. McBride seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

**- Investigations Division**

**- Status of Investigative Caseload**

Mr. Cooper stated the current investigative caseload is 96 cases per investigator. There are currently 604 open cases and 186 civil court cases that have not yet been opened and assigned.

**- Compliance Program Update**

Mr. Cooper explained there are currently 54 open compliance files, 34 of which were added during the fourth quarter of 2006. The compliance program has collected \$106,266 to date, and is still working on collecting the remaining \$164,594 owed to the Board. Compliance cases come from the issuance of conditional licenses and from the adjudicative process, so he anticipates receiving at least 30 additional cases during the course of 2007.

Dr. Held moved to adopt the report as presented. Dr. Rodriguez seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

**- Washoe County Medical Society Liaison Report**

Dr. Lamerson reported that she had discussed with members of the Washoe County Medical Society a proposed addition to a regulation for medical assistants. She has been working with Dr. Calvanese to reorganize and revamp the proposed regulation, and hopes to have a finalized draft for the next Board meeting. They initially began by writing out specifics, but the end product will most likely be much more general, and will not list specific things that medical assistants can and cannot do, but will be based on the premise that the use of medical assistants is to be based upon the standard of care.

**- Nevada State Medical Association Liaison Report**

Dr. Lamerson had nothing to report.

**- Clark County Medical Society Liaison Report**

Dr. Rodriguez stated there was not much to report, but that the Clark County Medical Society had been very active in the last election in endorsing the election of judges who support the medical community.

**- Secretary-Treasurer  
- Status of Finances**

Dr. Baepler stated he had nothing additional to report that was not covered in his report given under agenda item number 10.

**- International Association of Medical Regulatory Authorities (IAMRA) 7<sup>th</sup> International Conference on Medical Regulation, November 11-14, 2006, Wellington, New Zealand**

Dr. McBride said it was very interesting to get a perspective from other countries concerning the same issues faced here, in terms of initial training and verification of physicians on a world scale. New Zealand, Australia and the UK were very well represented at the conference.

Dr. Rodriguez said they received some interesting statistics. The average number of physicians per 100,000 worldwide is 9.3. Africa is the leanest at 2.3 and the United States is the fattest at 24.8. New Zealand is working on the issue of physician competence. They have found that in the community, five to six percent of doctors have what they consider some kind of serious deficiency in their level of performance. They have partnered with a private company to have observers spend time with physicians and go through a peer system to evaluate whether the physicians are up to speed. They have also found that residency reports are very significant in predicting which physicians will be disciplined once in private practice. Additionally, they are working on a type of "gold standard" that they can provide to their peer reviewers so they have a more uniform platform from which to evaluate their IMGs coming in, which might be something worth looking into in Nevada.

**- Diversion Program: Quarterly Report**

Peter A. Mansky, M.D., Director of the Nevada Health Professionals Assistance Foundation, thanked the Board for its support. He said they are currently following 101 physicians, which is about two percent of practicing physicians. Most physician health programs across the country follow one to two percent at any one time, not over a period of time. Over the last three years, they have averaged about 25 candidates for licensing and 81 clinicians per year. Close to one-third of these are people known to the Board.

Dr. Mansky said the Foundation is a member of the Federation of State Physician Health Programs, and he has provided a copy of that organization's guidelines for the Board's review. On a national level, they are working in cooperation with the Federation of State Medical Boards, and he is on a committee to help develop policies for identifying physicians who have depression. They hope that by identifying and treating physicians who have depression, the physicians will in turn better identify and treat their patients who have depression. They are also negotiating with the University of Nevada School of Medicine to become a part of the Department of Psychiatry, which would better allow them to obtain grants and would increase their visibility.

He thanked the Nevada State Medical Association, the Clark County Medical Society and the Washoe County Medical Society for their support in the Foundation's lobbying efforts to obtain some protective legislation. The article he is writing for the next Board newsletter talks about the Foundation's role in terms of protecting the public, and a major part of the Federation of State Physician Health Programs' mission is to protect the public, as well as to get good, well-qualified physicians back to work. They are now a physicians' health program and no longer just a diversion program.

Arne D. Rosencrantz, a member of the Foundation's Board of Directors, stated that during his eight years on the Board of Medical Examiners, none of the various versions of the diversion program were successful until the Foundation took over the program, and the Foundation has been doing terrific work.

Dr. Baepler moved to adopt the report as presented. Dr. McBride seconded the motion.

Dr. Held asked how much physicians in the program were charged, and Dr. Mansky stated new physicians entering the program are charged \$250 per month, while physicians who have been in the program for a long time are charged as little as \$100 per month. Altogether, the physicians support about half the program. The program receives some funding from the Osteopathic Board, and he recently approached one of the malpractice insurance companies, that is willing to contribute some funding. At the present time, none of the hospitals provide any funding, and that is his next effort. He has approached two so far, and has been told they have no money. There is a JAHCO regulation that requires hospitals to have a special track for physicians who have illnesses to evaluate and treat those illnesses, but many hospitals are not aware of it at this time. As the hospitals realize this, and that the Foundation can be of assistance to them in this regard, he thinks that may make a difference.

Ms. Brand suggested that the Foundation talk to the risk managers at the hospitals.

Dr. Lamerson asked whether it would be appropriate for the Board to write a letter to the hospitals in support of the Foundation, and Dr. Anwar stated it would not, as it would be outside the jurisdiction of the Board.

Dr. Lamerson asked whether, under the Board's new budget, the Board would continue to support the Foundation, and Dr. Baepler stated that it would, although the amount would have to be determined.

A vote was taken on the motion, and it passed unanimously, with the Chair voting in favor of the motion.

#### **- Physician Assistant Advisory Committee**

John B. Lanzillotta, P.A.-C, Physician Assistant Advisory Committee Member, stated that the Advisory Committee is seeking the Board's advice concerning the issue of physician assistants signing practice-related forms and documents that currently require the signature of a physician. They feel the ability to sign forms, such as handicapped parking forms and some workers' compensation forms, as a representative of the supervising physician, would provide an efficient and timely response and avoid a delay for patients in obtaining permits or processing claims for injuries or illnesses. They reviewed the laws of various other states, and have provided proposed language to the Board for its consideration for inclusion in a proposed regulation or statute.

Discussion ensued concerning what it is that prevents physician assistants from signing the aforementioned types of documents, and how the Board might be able to assist them in obtaining authority to do so.

Dr. Lamerson stated the Board cannot regulate what other agencies require, as the Board does not have jurisdiction over other agencies.

Dr. Anwar said that as far as the Board is concerned, there would be no restriction against physician assistants signing those documents, because they would be doing so under their supervising physician, but there is no action the Board can take to assist them in this regard that would be within the Board's jurisdiction.

Dr. Baepler suggested the Advisory Committee talk with the agencies in question to find out why physician assistants are not currently authorized to sign, because it may just be an oversight.

Dr. McBride moved to adopt the report as presented. Mrs. Kirch seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Agenda Item 27

**APPEARANCES FOR CONSIDERATION OF ACCEPTANCE OF APPLICATIONS  
FOR LICENSURE**

Ms. Stoess moved to go into Closed Session to discuss the character and professional competence of applicants for licensure. Mrs. Kirch seconded the motion, and it passed.

**CLOSED SESSION**

**27(a) Herbert Julian Karelitz, M.D.**

Herbert Julian Karelitz, M.D. appeared before the Board on his application for licensure by endorsement.

Dr. Baepler explained the circumstances under which the Board grants licensure by endorsement, and told Dr. Karelitz he would have to show that he met the qualifications for licensure by endorsement, as his application alone did not. Dr. Baepler suggested that in light of that fact, Dr. Karelitz might want to consider withdrawing his application, as it was possible the Board might not exercise its discretion to grant him licensure by endorsement. Dr. Baepler then explained that since Dr. Karelitz had not passed a major examination within the last 10 years, had not practiced medicine for the last 10-1/2 years, and did not have 3 years progressive postgraduate training, all of which were requirements for licensure in Nevada, he should attempt to cure those deficiencies before reapplying.

Dr. Karelitz stated that when he began practicing, there was no nuclear medicine specialty board, so he did not think that requirement was fair. He also stated he had not written many papers because rather than sitting in an "ivory tower" writing papers and treatises, he had spent his time treating thousands of patients, and he knew more about clinical nuclear medicine than the people sitting in the ivory towers. He explained that during the 10 years since he quit practicing, he had continued to study medicine, he had studied mathematics, and he had been writing professionally.

Dr. Baepler stated that the requirements for licensure that he enumerated before were all required pursuant to statute, and that the Board could not make exceptions to statutory requirements.

Dr. McBride stated that the Board recognized Dr. Karelitz had a very distinguished career in nuclear medicine in California over ten years ago, but he did not meet the standards for licensure in Nevada at this time.

Dr. Karelitz withdrew his application for licensure.

Mrs. Kirch moved that the Board return to Closed Session. Dr. Lamerson seconded the motion, and it passed.

**27(b) Antonio Saqueton, M.D.**

Antonio Saqueton, M.D. appeared before the Board on his application for licensure by endorsement.

Mrs. Kirch stated that Dr. Saqueton did not meet the requirements for a medical license in Nevada, as he had not completed 36 months of postgraduate training, he had not passed a major examination within the last 10 years and he had not practiced clinical medicine for quite some time. She explained the circumstances under which the Board grants licensure by endorsement, and asked Dr. Saqueton what special circumstances he could cite that would qualify him for licensure by endorsement when he otherwise doesn't meet the requirements for licensure.

Dr. Saqueton complained about the process he had been through in submitting his application for licensure.

Dr. Anwar stated that Dr. Saqueton's appearance before the Board at this time was solely for the purpose of considering his application for licensure, and if Dr. Saqueton had grievances regarding the procedures of the Board, he could pursue those at another time.

Mrs. Kirch again asked Dr. Saqueton what special circumstances he could cite that would qualify him for licensure by endorsement.

Dr. Saqueton stated that he was qualified according to the new law concerning licensure by endorsement.

Mrs. Kirch explained that the law leaves it to the discretion to the Board as to whether an applicant should be granted a license by endorsement.

Dr. Anwar again explained the circumstances under which the Board grants licensure by endorsement and stated that neither Dr. Saqueton's application nor his responses at the meeting had provided information sufficient to qualify him for licensure by endorsement.

Dr. McBride moved that Dr. Saqueton be allowed to withdraw his application. The motion died for lack of a second.

Mrs. Kirch moved that the Board decline to exercise its discretion to grant a license by endorsement to Dr. Saqueton. Dr. McBride seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Dr. Rodriguez moved that the Board return to Closed Session. Dr. Held seconded the motion, and it passed.

**27(c) Elliott Schmerler, M.D.**

Elliott Schmerler, M.D. appeared before the Board on his application for licensure.

Dr. Rodriguez asked Dr. Schmerler where he was currently working, and Dr. Schmerler explained he had been working as a surgical assistant and a consultant in a family practice clinic in Arizona for several years.

Dr. Rodriguez asked about his future plans, and Dr. Schmerler stated the group had offered him a position as a family practitioner. He stated he did not plan to perform surgery.

Dr. Rodriguez asked Dr. Schmerler what had happened in the last couple of years that would convince the Board that Dr. Schmerler would not get into the same trouble he had gotten into in the past.

Dr. Schmerler stated the trouble he had gotten into with the IRS was in 1995. It was related to his divorce and his going through a turbulent time for a few years. He paid a dear price for his bad choices and stated it would never happen again. And that was one of the reasons he decided to go back to family practice. He practiced in Nevada for 18 years and was lawsuit-free 98 percent of the time while in family practice. The lawsuits began when he began practicing plastic surgery and he had no desire to put himself in a position to even be perceived as doing something wrong.

Dr. Rodriguez stated the Board was there to protect the public and has to answer for its actions, and asked again what assurances Dr. Schmerler could give the Board that he would not make the same poor decisions again.

Dr. Schmerler stated he didn't believe any applicant could give any board a guarantee or assurance, and that the Board has to rely on an applicant's word, but he was more concerned than anyone in the room because he was the one who had everything to lose, so he was never going to put himself in that jeopardy.

Dr. Held asked about the October 2004 letter from Dr. Gear in Arizona that stated Dr. Schmerler was "involved in all aspects of primary care including initial evaluations, diagnosis, and treatment plans."

Dr. Schmerler stated he did not see patients; he discussed the cases with physicians.

Dr. Baepler commented on the fact that a second letter from Dr. Gear, written two years after the language in the first letter had been brought to Dr. Schmerler's attention, was devoid of that statement.

Dr. McBride asked why Dr. Gear's letter stated that Dr. Schmerler was liked by his patients if Dr. Schmerler did not treat patients.

Dr. Schmerler stated he was introduced to patients like any other employee working in the clinic, but did not treat patients. He said the practice he works for is a teaching practice and he is one of several students there, and they have a room where patients are presented to students initially and then presented to one of the two physicians.

Dr. Held moved that the Board return to Closed Session. Mrs. Kirch seconded the motion, and it passed.

Upon returning to Open Session, Dr. Baepler moved that the Board grant an unrestricted license to Elliott Schmerler, M.D., with the following conditions: (1) that he maintain his board certification in family practice; and (2) that he not practice either cosmetic or plastic surgery under the terms of the license. Dr. Anjum seconded the motion, and it passed, with Mrs. Kirch, Dr. Held and Dr. Lamerson voting against the motion, and the Chair voting in favor of the motion.

#### Agenda Item 16 **(CONTINUED)**

##### **REPORTS**

- Diversion Program - Quarterly Report - Peter Mansky, M.D., Director, Nevada Health Professionals Assistance Foundation
- Physician Assistant Advisory Committee - John B. Lanzillotta, P.A.-C, Advisory Committee Member
- Practitioner of Respiratory Care Advisory Committee - Steven E. Kessinger, C.R.T., Advisory Committee Member
- Investigative Committees - Donald H. Baepler, Ph.D., D.Sc., Secretary-Treasurer, Chairperson, Investigative Committee A  
Sohail U. Anjum, M.D., Chairperson, Investigative Committee B
  - Consideration of Cases Recommended for Closure by the Committees
- Investigations Division - Douglas C. Cooper, Chief of Investigations
  - Status of Investigative Caseload
  - Compliance Program Update
- Nevada State Medical Association Liaison Report - Cindy Lamerson, M.D., Board Member; Lawrence P. Matheis, Executive Director, Nevada State Medical Association
- Clark County Medical Society Liaison Report - Benjamin J. Rodriguez, M.D., Board Member; Weldon Havins, M.D., J.D., CEO and Special Counsel, Clark County Medical Society
- Washoe County Medical Society Liaison Report - Cindy Lamerson, M.D., Board Member; Jeanie L. Catterson, Executive Director, Washoe County Medical Society
- Secretary-Treasurer - Donald H. Baepler, Ph.D., D.Sc., Secretary-Treasurer
  - Status of Finances
- International Association of Medical Regulatory Authorities (IAMRA) 7<sup>th</sup> International Conference on Medical Regulation, November 11-14, 2006, Wellington, New Zealand
  - S. Daniel McBride, M.D., Board Member; Benjamin J. Rodriguez, M.D., Board Member

#### **- Nevada State Medical Association Liaison Report (CONTINUED)**

Lawrence P. Matheis, Executive Director of the Nevada State Medical Association, stated the Medical Association is still working on the issues for the next legislative session.



**- Clark County Medical Society Liaison Report (CONTINUED)**

Weldon Havins, M.D., J.D., CEO and Special Counsel of the Clark County Medical Society, introduced Florence Jameson, the current President of the Clark County Medical Society. Dr. Jameson stated they are currently knee-deep into their membership drive and were heavily involved in the recent elections, and at the end, 17 of the 22 candidates they endorsed were elected. They are trying to turn their local efforts into national efforts. They recently met with representatives of the AMA and are working hard on efforts within their community to assist their Medicare population.

**Agenda Item 27 (CONTINUED)**

**APPEARANCES FOR CONSIDERATION OF ACCEPTANCE OF APPLICATIONS  
FOR LICENSURE**

Dr. McBride moved to go into Closed Session to discuss the character and professional competence of applicants for licensure. Mrs. Kirch seconded the motion, and it passed.

**CLOSED SESSION**

**27(d) Miriam Bar-on, M.D.**

Miriam Bar-on, M.D. appeared before the Board on her application for licensure by endorsement.

Dr. Anwar questioned Dr. Bar-on concerning the fact that she has not passed a major examination within the last ten years.

Dr. Bar-on stated that Pediatrics began requiring recertification two years after she took the Boards so she does not have to recertify. She stated that, if licensed, she would be the Associate Dean for Graduate Medical Education at the University of Nevada Medical School and hoped to be involved in clinical medicine. She is also continuing to write publications.

Dr. Baepler moved that the Board exercise its discretion to grant a license by endorsement to Dr. Bar-on. Dr. Lamerson seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Dr. Held moved that the Board return to Closed Session. Dr. McBride seconded the motion, and it passed.

**27(e) Vaneeta Kubal, M.D.**

Vaneeta Kubal, M.D. appeared before the Board on her application for licensure by endorsement.

Dr. Anwar explained the circumstances under which the Board grants licensure by endorsement, and asked Dr. Kubal what special circumstances she could cite that would qualify her for licensure by endorsement when she otherwise doesn't meet the requirements for licensure.

Dr. Kubal stated that if granted a license, she planned to practice occupational medicine in Nevada.

Dr. Held moved that the Board decline to exercise its discretion to grant a license by endorsement to Dr. Kubal. Dr. Baeppler seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Dr. Held moved that the Board grant an unrestricted license to Dr. Kubal, subject to successful passage of a peer review. Dr. Baeppler seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Dr. Held moved that the Board return to Closed Session. Mrs. Kirch seconded the motion, and it passed.

**27(f) Prudencia Kintaudi, M.D.**

Prudencia Kintaudi, M.D. appeared before the Board on her application for licensure by endorsement.

Dr. Lamerson questioned Dr. Kintaudi concerning the fact that she has not passed a major examination within the last 10 years and does not have 36 months progressive postgraduate education.

Dr. Kintaudi explained that if granted a license, she would be working as a general practitioner, and administering an adult alcohol and drug rehabilitation program, as well as practicing clinical medicine.

Dr. Lamerson explained the circumstances under which the Board grants licensure by endorsement, and asked Dr. Kintaudi what special circumstances she could cite that would qualify her for licensure by endorsement when she otherwise doesn't meet the requirements for licensure.

Dr. Kintaudi stated she has established seven or eight programs, provided oversight over physicians in the programs and created grants and programs for medically underserved populations.

Dr. Kintaudi said she plans to take the SPEX examination.

Dr. Lamerson moved that the Board return to Closed Session. Mrs. Kirch seconded the motion, and it passed.

Upon returning to Open Session, Mrs. Kirch moved that the Board decline to exercise its discretion to grant a license by endorsement to Dr. Kintaudi. Dr. McBride seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Agenda Item 24

**CONSIDERATION OF STIPULATION FOR SETTLEMENT IN THE MATTER OF THE  
NEVADA STATE BOARD OF MEDICAL EXAMINERS vs. FREIDA FLEISCHER, M.D.,  
BME CASE NO. 06-4888-1**

- Lyn E. Beggs, J.D., Deputy General Counsel

**OPEN SESSION**

Ms. Brand stated that this matter had been taken off the agenda.

Agenda Item 25

**CONSIDERATION OF STIPULATION FOR SETTLEMENT IN THE MATTER OF THE  
NEVADA STATE BOARD OF MEDICAL EXAMINERS vs. RONALD FOOTE, M.D.,  
BME CASE NO. 05-12899-2**

- Edward O. Cousineau, J.D., Deputy General Counsel

**OPEN SESSION**

Dr. Baepler stated that this matter had been taken off the agenda.

Agenda Item 27 *(CONTINUED)*

**APPEARANCES FOR CONSIDERATION OF ACCEPTANCE OF APPLICATIONS  
FOR LICENSURE**

Dr. Baepler moved to go into Closed Session to discuss the character and professional competence of applicants for licensure. Dr. Held seconded the motion, and it passed.

**CLOSED SESSION**

**27(g) Rodney Raabe, M.D.**

Rodney Raabe, M.D. appeared before the Board on his application for licensure by endorsement.

Ms. Stoess questioned Dr. Raabe concerning what he planned to do if he were granted a license in Nevada.

Dr. Raabe described his current radiology practice and explained that he is part of a radiology group that has developed specialized radiology services and is opening specialty radiology clinics in various areas, utilizing physicians that are already in the area, as well as hiring additional radiologists as needed. They are exploring the idea of opening clinics in Nevada as well. He plans to take his recertification examination in March.

Ms. Stoess explained the circumstances under which the Board grants licensure by endorsement.

Ms. Stoess moved that the Board decline to exercise its discretion to grant a license by endorsement to Dr. Raabe. Dr. Rodriguez seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Ms. Stoess moved that the Board grant an unrestricted license to Dr. Raabe, subject to successful passage of a peer review. Mrs. Kirch seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Dr. Anjum moved that the Board return to Closed Session. Mrs. Kirch seconded the motion, and it passed.

**27(i) Alan Bolnick, M.D.**

Alan Bolnick, M.D. appeared before the Board on his application for licensure.

Dr. Anjum questioned Dr. Bolnick concerning his affirmative responses to Questions 12 and 31 and his negative response to Question 13 on his application for licensure.

Dr. Bolnick explained the circumstances surrounding the malpractice claims against him, the investigation of him by the Georgia Medical Board and his arrest in 1990 for driving under the influence. He stated that he originally responded to Question 13 in the negative because he thought that after 16 years a plea of nolo contendere would have been exonerated from his record. After further consultation with his legal counsel, who had been out of town when he completed and sent the application to the Board, he contacted Board staff and changed his response. He explained that he had received an offer from the University of Nevada to work in the Maternal-Fetal Medicine Department in Las Vegas if he was granted a license.

Dr. Anjum moved that the Board grant Dr. Bolnick's application for licensure. Dr. Baepler seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Dr. Baepler moved that the Board return to Closed Session. Mrs. Kirch seconded the motion, and it passed.

**27(j) Lee Beville, III, M.D.**

Lee Beville, III, M.D. appeared before the Board on his application for licensure.

Dr. Baepler stated the Board had reviewed Dr. Beville's record in detail and recognized he was licensed in a number of states and has excellent credentials. From reading his application, they understood what had occurred with his licenses in Louisiana and Ohio. He asked Dr. Beville what he planned to do if licensed in Nevada.

Dr. Beville stated he wants to practice in a medium-sized community in the field of radiology, and has applied for licensure in several other states as well partly because of his desire to practice in a smaller community.

Dr. McBride moved that the Board grant Dr. Beville's application for licensure. Dr. Rodriguez seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Mrs. Kirch moved that the Board return to Closed Session. Dr. Held seconded the motion, and it passed.

Dr. Anjum left the meeting at 4:35 p.m.

**27(k) Jerry Beckham, M.D.**

Jerry Beckham, M.D. appeared before the Board on his application for licensure.

Mrs. Kirch questioned Dr. Beckham concerning his negative response to Question 13 on his application for licensure.

Dr. Beckham explained that he answered Question 13 on his application for licensure in the negative because he misread the question and thought it was asking solely for convictions, and he was not convicted of the charge of disorderly conduct in 2005. When Board staff called him and read the question to him, it was clear, so he has no excuse, but he did not intend to mislead the Board.

Dr. McBride moved that the Board grant Dr. Beckham's application for licensure. Ms. Stoess seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Dr. Anwar admonished Dr. Beckham to be more careful in the future when completing applications and providing information to the Board.

Dr. McBride moved that the Board return to Closed Session. Mrs. Kirch seconded the motion, and it passed.

**27(l) Rafael Okamoto, M.D.**

Rafael Okamoto, M.D. appeared before the Board on his application for licensure.

Dr. McBride questioned Dr. Okamoto concerning his affirmative response to Question 19 on his application for licensure, why he chose to attend Saba University and what he thought of the education he received there.

Dr. Okamoto explained why he attended Saba University, and told the Board they use the same textbooks as U.S. medical schools and he did all his clinical rotations in the states. He described the circumstances surrounding the academic remediation placed upon him during his internship and explained that he was not in the Army, but he did his residency at an Army medical center that has three non-Army residency positions.

Dr. Lamerson asked how Dr. Okamoto did on his internal medicine in-service exams, and he stated he had scored 75 percent and 85 percent.

Dr. Held asked Dr. Okamoto if he knew what Sal Manila Home Videos was, and Dr. Okamoto said he did not. Dr. Held asked Dr. Okamoto whether he was aware that if someone "Googles" his name, the first hit that comes up on the Google site is Sal Manila Home Videos, and that it lists his name and home address as custodian of records for Sal Manila Home Videos. Dr. Okamoto said he was not aware of it. Dr. Held showed Dr. Okamoto a

website on the computer that listed Dr. Okamoto as custodian of records for Sal Manila Home Videos, and asked if the address listed there was his home address. Dr. Okamoto stated that it was. Dr. McBride asked Dr. Okamoto if he had any idea what it was in reference to, and Dr. Okamoto said he did not.

Dr. McBride moved that the Board return to Closed Session. Dr. Held seconded the motion, and it passed.

Upon returning to Open Session, Dr. McBride moved that the Board grant Dr. Okamoto's application for licensure, pending successful completion of his residency. Dr. Rodriguez seconded the motion, and it passed, with Mrs. Kirch, Dr. Held and Dr. Lamerson opposed to the motion and the Chair voting in favor of the motion.

Dr. Anwar advised Dr. Okamoto that the Board had deliberated at length over their concerns regarding the question of his honesty, and the Board was not in a position to discern it either way, but the reason it is so important is because in a physician's life it reflects in all areas of patient care, and the Board takes that very seriously.

### **RECESS**

Dr. Held moved to recess the meeting for the evening. Dr. Rodriguez seconded the motion, and it passed. Dr. Anwar recessed the meeting at 6:15 p.m.

**SATURDAY, DECEMBER 2, 2006**

***Board Members Present***

Javaid Anwar, M.D., President  
Sohail U. Anjum, M.D., Vice President  
Donald H. Baepler, Ph.D., D.Sc., Secretary-Treasurer  
Marlene J. Kirch  
Charles N. Held, M.D.  
Jean Stoess, M.A.  
Cindy Lamerson, M.D.  
S. Daniel McBride, M.D.  
Benjamin J. Rodriguez, M.D.

***Staff Present***

Drennan A. Clark, J.D., Executive Director/Special Counsel  
Laurie L. Munson, Deputy Executive Director/  
Information Systems Administrator/Chief of Administration  
Bonnie S. Brand, J.D., General Counsel  
Jerry C. Calvanese, M.D., Medical Reviewer  
Lynnette L. Daniels, Chief of Licensing  
Carolyn H. Castleman, Deputy Chief of Licensing

***Also Present***

Christine M. Guerici-Nyhus, J.D., Chief Deputy Attorney General

**RECONVENE**

Dr. Anwar reconvened the meeting at 8:45 a.m.

Agenda Item 27 ***(CONTINUED)***

**APPEARANCES FOR CONSIDERATION OF ACCEPTANCE OF APPLICATIONS  
FOR LICENSURE**

Mrs. Kirch moved to go into Closed Session to discuss the character and professional competence of applicants for licensure. Dr. McBride seconded the motion, and it passed.

**CLOSED SESSION**

**27(m) Richard Bailey, M.D.**

Richard Bailey, M.D. appeared before the Board on his application for licensure by endorsement.

Dr. Rodriguez questioned Dr. Bailey concerning his affirmative response to Questions 12 and 31 on his application for licensure, his current practice and what he planned to do if granted a Nevada medical license.

Dr. Bailey stated he was currently practicing Otolaryngology in Bullhead City and if granted a Nevada license, he planned to open a satellite office in Laughlin. He has a traditional ENT practice and performs some facial plastic surgery. He explained the circumstances surrounding the malpractice claims against him.

Dr. Rodriguez moved that the Board decline to exercise its discretion to grant licensure by endorsement to Dr. Bailey. Dr. McBride seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Dr. Rodriguez moved that the Board grant an unrestricted license to Dr. Bailey, subject to successful passage of a peer review. Mrs. Kirch seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Dr. Held moved that the Board return to Closed Session. Dr. Baepler seconded the motion, and it passed.

**27(n) Mark Larkins, M.D.**

Mark Larkins, M.D. appeared before the Board on his application for licensure.

Dr. Held questioned Dr. Larkins concerning his affirmative response to Question 19 on his application for licensure.

Dr. Larkins explained the circumstances surrounding his Florida residency program's investigation of him for diversion of narcotics, which he stated was due to several "wastes" of narcotics in a short period of time, by him personally, as well as by other residents who had signed for narcotics under his name, none of which were well documented. He further explained that his leave of absence during residency was due to his attendance at an alcohol treatment program.

Dr. Held moved that the Board grant Dr. Larkins' application for licensure contingent upon his continuing participation in, and successful completion of, the Diversion Program. Dr. Baepler seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Mrs. Kirch moved that the Board return to Closed Session. Dr. McBride seconded the motion, and it passed.

**27(o) Arnaldo Trabucco, M.D.**

Arnaldo Trabucco, M.D. appeared before the Board on his application for licensure.

Dr. Anjum questioned Dr. Trabucco concerning his affirmative responses to Questions 12, 13, 28 and 31 on his application for licensure.

Dr. Trabucco explained the circumstances surrounding his arrest for possession of marijuana, and the subsequent discipline by the Indiana and New York licensing boards.



Dr. Anjum moved that the Board return to Closed Session. Dr. Held seconded the motion, and it passed.

Upon returning to Open Session, Dr. Anjum moved that the Board grant Dr. Trabucco's application for licensure. Ms. Stoess seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Dr. Lamerson moved to go into Closed Session. Dr. Held seconded the motion, and it passed.

**27(p) Michel Vandormael, M.D.**

Michel Vandormael, M.D. appeared before the Board on his application for licensure by endorsement.

Dr. Anwar questioned Dr. Vandormael concerning the many publications on which he is listed as an author and his service on the editorial boards of several well-known publications on cardiology.

Dr. Vandormael explained the nature of his contributions to the various publications attributed to him and what he planned to do if granted a license in Nevada.

Dr. Anjum moved that the Board exercise its discretion to grant licensure by endorsement to Dr. Vandormael. Dr. Baepler seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Agenda Item 17

**EXECUTIVE STAFF REPORTS**

- Consideration of Request for Staff Attendance at Educational Meetings
- Consideration of Proposed 2007 Board Meeting Schedule
- Status of Staff Additions and Board Office Space
- Informational Items
  - Drennan A. Clark, J.D., Executive Director/Special Counsel

**- Consideration of Request for Staff Attendance at Educational Meetings**

Mr. Clark advised that the Executive Committee had approved a request for training for Ms. Daniels and Ms. Castleman on December 4, 2006.

**- Consideration of Proposed 2007 Board Meeting Schedule**

Mr. Clark read the proposed meeting schedule, as included in the Board packets, and discussion ensued concerning the proposed dates.

It was decided the meeting schedule would be as follows: March 16 & 17, June 8 & 9, September 14 & 15 and November 30 and December 1, 2007.

**- Status of Staff Additions and Board Office Space**

Mr. Clark reported that the Board's staff is currently at full capacity and the Board has all the space it requires.

Agenda Item 18

**LEGAL REPORTS** - Bonnie S. Brand, J.D., General Counsel  
Christine M. Guerci-Nyhus, J.D., Chief Deputy Attorney General

- Board Litigation Status

**- Board Litigation Status**

Ms. Brand reported there are 2 cases pending settlement and 9 letters of concern had been sent out. There are 32 cases pending hearings set through September 11, 2007 and 11 cases pending the filing of formal complaints. There are 54 cases in the Legal Department requiring Investigative Committee summaries. With respect to district court appellate cases, A hearing has been ordered by the Court in Dr. Hakimi's case, which Ms. Beggs is handling, Dr. Wick has filed a Nevada Supreme Court appeal, and Mr. Cousineau will be following up on that. Dr. Fani-Salek has not yet filed a Nevada Supreme Court appeal, but his time has not yet run and she thinks he probably will.

Ms. Guerci-Nyhus reported that in Dr. Giarrusso's case, several depositions are scheduled in December. Ms. Hegeduis will be covering those earlier in the month and Ms. Guerci-Nyhus will cover those later in the month.

Agenda Item 26

**LICENSURE RATIFICATION**

Dr. Baepler moved that the Board ratify the licenses issued and reinstatements of licensure and changes of licensure status approved since the September 15 & 16, 2006 Board meeting. Mrs. Kirch seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Agenda Item 14

**DISCUSSION CONCERNING BOARD RETREAT**

Mr. Clark stated there will be a Board retreat on May 2nd, the day prior to the FSMB annual meeting in San Francisco, at the same hotel. A room will be reserved there for the meeting and reservations will be made for all Board members to arrive in San Francisco the day before the meeting. He will arrange for a facilitator to assist in keeping the discussion moving and will secure subject-matter experts from FSMB where appropriate. A list of the issues identified at this meeting for discussion at the retreat will be forwarded to all Board members for review, and additional items suggested by Board members will be added to the list.

Ms. Guerci-Nyhus advised that since there will be a quorum present at the retreat, it will have to be noticed as a meeting of the Board. There will have to be a time set for public comment at the end, and a teleconference will have to be set up so there is a site in Nevada where the public can attend.

Discussion ensued concerning the location of the meeting and compliance with the Nevada Open Meeting Law.

Ms. Brand said she would review the matter with Ms. Guerci-Nyhus and prepare a memorandum with their findings.

Agenda Item 28

**MATTERS FOR FUTURE AGENDA**

Mr. Clark stated the following matters will be on the Agenda for the March 2007 Board meeting: consideration and approval of the biennial budget for fiscal years 2008 and 2009; consideration of a revised proposed regulation authorizing physician assistants to act under supervision of any physician at the scene of an accident or a natural or manmade disaster when rendering emergency care; consideration of a revised regulation on the use of medical assistants; consideration of renewal of the contract with the Nevada Health Professionals Assistance Foundation which expires in June; and consideration of a proposed regulation prohibiting sexual relations between a doctor and a patient for one year after formal termination of the doctor-patient relationship, or two years after formal termination of the doctor-patient relationship, if the doctor is a psychiatrist.

Agenda Item 29

**PUBLIC COMMENT**

Dr. Anwar announced that it was time to receive public comment and that each person would be allowed five minutes, and if there was additional information to be presented to the Board, it could be presented in writing or the individual could request that the matter be placed on the agenda for a future meeting.

Anne Gallagher addressed the Board concerning her sister, Ellen Gallagher, who had been treated for a mysterious progressive neurological illness by a number of physicians, including Dr. Frank Shallenberger of Carson City, for a seven-week period. She subsequently died.

Dr. Anwar stated that if Ms. Gallagher had a complaint, she should submit it to the Board in writing.

Ms. Guerci-Nyhus advised Ms. Gallagher that if she has filed a complaint with the Board and the Board were to bring an action against Dr. Shallenberger, the Board members are the ones who would hear the action and make a decision, and it could be a violation of Dr. Shallenberger's due process rights if Ms. Gallagher presented them with facts prior to the hearing. If Ms. Gallagher wanted the Board to be able to prosecute Dr. Shallenberger if he has done something wrong, telling the Board about Dr. Shallenberger at this juncture could taint the process and end up hurting her case.

She stated her concern is that she may not be advised whether the case is moving forward, and may not have an opportunity to speak because the case is already closed.

Dr. Baepler stated anyone who files a complaint is informed of the outcome of the case and if the individual disagrees with the finding, he or she can request a review of the decision.

Ms. Gallagher said she had filed a complaint but had not received information concerning the outcome of the case, and Dr. Baepler stated that if she hadn't been told the case was closed, it was still open.

Susan Gallagher addressed the Board concerning Ellen Gallagher and regarding her concerns that physicians in Nevada holding both an allopathic license and a homeopathic license were able to escape discipline for their actions as a result of their dual licensure.

Dr. Baepler stated that if a physician who is dually licensed violates the allopathic medicine laws, the Board can take action.

### **ADJOURNMENT**

Mrs. Kirch moved to adjourn the meeting. Dr. Held seconded the motion, and it passed. Dr. Anwar adjourned the meeting at 11:00 a.m.